In the Matter of: Proposed debarment for labor standards violations by: BERBICE CORPORATION, Subcontractor and MOHAMED KHALEEL and NANCY JEAN KHALEEL, Individually With respect to laborers and mechanics employed by the Subcontractor under Contract DACA56-92-C-0128 for installation of roof at the Consolidated Fuels Controls Test Facility at Tinker Air Force Base located in Oklahoma City, Oklahoma. Respondents	Date Issued: 4/16/99 Case No.: 98-DBA-9

APPEARANCES:

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BEFORE: CLEMENT J. KENNINGTON
Administrative Law Judge

DECISION AND ORDER

This proceeding arises under the Reorganization Plan No. 14 of 1950 (64 Stat. 1267), the

Davis-Bacon Act (DBA), as amended, 40 U.S.C. § 276a, *et seq.*, and the applicable regulations issued thereunder at 29 C.F.R. Part 5. This matter was referred to me by the Office of Administrative Law Judges based upon an Order of Reference dated January 20, 1998 issued by the Regional Solicitor, United States Department of Labor (Solicitor) and a request for hearing pursuant to 29 C.F.R. § 5.12(b).

This dispute arises from allegations that subcontractor Berbice Corporation and its officers, Mohamed Khaleel and Nancy Jean Khaleel, (Respondents) violated of the labor standards provisions of the DBA in disregard of their obligations to their employees during the performance of contract number DACA 56-92-C-0128 at the Consolidated Fuel Controls Test Facility at Tinker AFB, Oklahoma City, Oklahoma (hereinafter Wynn).[1] The Order of Reference, Complaint and Amended Complaint (ALJX-1; ALJX-3) assert that Respondents failed to properly classify and compensate twenty-two employees who performed sheet metal work under the contract from October 25, 1993 through June 26, 1994.[2] Based on these alleged violations and a history of prior investigations and violations, the Solicitor asserts that Respondents have shown a disregard of their obligation to employees which warrants debarment pursuant to Section 3(a) of the DBA.

Respondents admit that the workers were classified and compensated as metal building erectors and laborers from October 25, 1993 to June 26, 1994, but deny any misclassification. They contend that prior to commencement of any work under the contract their representatives were informed by contracting officer Nancy Wright that the classifications to be employed, metal building erectors and laborers, were appropriate for the performance of the contract. Further, Respondents had previously completed performance of a similar contract for the construction of an aircraft maintenance hanger at Tinker AFB, under which the metal building erector classification was determined to be appropriate. Respondents contend that debarment is not appropriate in that they did not deliberately violate the labor standards of the DBA. Respondents contend that they properly verified the accuracy of the classifications prior to the commencement of any work under the contract and any misclassification which may have occurred was the result of misinformation provided to them by Nancy Wright.

A hearing was held on this matter in Oklahoma City, Oklahoma, on February 9-10, 1999. At the hearing the parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. The parties waived the

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[1] Individual contracts discussed in this decision will be referred to by the name of the prime contractor on the job when possible.

[2] The Order of Reference also included allegations that Respondents failed to pay twelve employees $152.61 as required by the Contract Work Hours and Safety Standards Act (CWHSSA). The Solicitor, however, made no reference to this alleged violation in either its Response to the Prehearing Order or during the hearing. Thus, the only alleged violations presented for my consideration are those related to the DBA.

opportunity to submit briefs.[3]

I. ISSUES

The parties disagree on the issues. Initially, the Solicitor asserted that the issues to be resolved were the alleged misclassification of workers; the amount of alleged wage underpayment; and potential debarment resulting from the alleged misclassification and wage underpayment. At the hearing the Solicitor took the position that the only issues to be addressed were misclassification and debarment, inasmuch as the prime contractor, Wynn Construction Company, had fully reimbursed all workers for the alleged underpayment. Indeed, the Solicitor offered no evidence as to the underpayment of any worker.[4]

Respondents argue that in addition to the issues asserted by the Solicitor, a determination of back wages due their employees should be made because the prime contractor withheld $39,034.13 under the contract. In essence, Respondents seek the return of the withheld funds in the event that their classifications are found to be proper. The Solicitor correctly argues, however, that the Order of Reference (ALJX-3) determines the issues to be resolved by the administrative hearing. Neither the Order nor the pleadings[5] presented the issue of withheld funds or payment of back wages. As such, I have no authority to determine or order any reimbursement to Respondents regardless of my findings in this matter. *See* E.B. Fitzpatrick, Jr., Construction Corp., WAB Case No. 87-17 (July 9, 1987).

The Order of Reference and pleadings dealt solely with the issue of Respondents' potential debarment as a consequence of their alleged disregard of their obligations to employees. Accordingly, I find that I have no authority to decide any additional issue, including the potential reimbursement of Respondents, that was not within the scope of either the Order of Reference or the pleadings and was not tried as an issue by the express or implied consent of the parties pursuant to either 29 C.F.R. §6.30 or §6.31.

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[3] References to the transcript and exhibits are as follows: trial transcript - Tr. __; Respondents' exhibits - RX-__; Government's exhibits - GX- __; Administrative Law Judge exhibits - ALJX- __.

[4] The Solicitor's Response to the Prehearing Order contained a list of names and amounts of backwages allegedly owed by Respondents' under the Wynn contract. No supporting evidence was presented. (ALJX-7).

[5] The DOL notification letter and Respondents' response thereto comprise the pleadings in this matter.

II. SUMMARY OF EVIDENCE

A. Testimonial Evidence

Carrie Moore

Carrie Moore was a labor relations clerk for the Army Corps of Engineers at Tinker Air Force Base during the period of the Wynn contract.[6] Her job responsibilities included enforcement of the DBA. This involved verification of the weekly payrolls submitted by the contractors and subcontractors and unannounced jobsite interviews of laborers. The payrolls were then compared to the information obtained during the interviews to ensure proper classification and payment of workers. Moore performed these duties for over eleven years prior to her retirement. (Tr. 14-16).

Moore conducted three laborer interviews in November 1993 and five in February 1994 at the Wynn jobsite at Tinker AFB at the request of her supervisor, Nancy Wright. During her visits to the jobsite for the November 1993 interviews, Moore observed three of Respondents' workers on the roof of the facility in the process of installing a standing seam metal roof. The workers were wearing tool belts containing tools of the trade and using screw guns, hand-held benders, and electric drills. The subsequent interviews with these workers confirmed that they were classified and compensated as metal building erectors (MBEs). During her February 1994 visits, Moore again observed the workers on the roof installing the standing seam metal roof. In addition to the tools previously identified, the workers were also using power and hand cutters. The subsequent interviews confirmed that they continued to be classified and compensated as MBEs. Moore did not review any of the payrolls submitted by Respondent prior to her retirement. (Tr. 16-24).

Gary W. Nelson

Nelson is the business manager of the Sheet Metal Workers' Local 124 in Oklahoma City, Oklahoma. He has held this position for twelve years and been a member of Local 124 for twenty-nine years. One of his duties as business manager is to ensure that employers of his members participate in labor wage surveys in order to secure work for sheet metal workers. (Tr. 30-34).

Nelson testified that he is familiar with the DBA and often answers questions from contractors regarding the types of work claimed by SMWs. The claimed work includes metal roofs, flashings, siding, and decking. Nelson testified that the Wynn contract roof was a standing seam metal roof and that sheet metal workers (SMWs) have historically installed standing seam metal roofs. They also

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[6] Ms. Moore retired from her position in April 1994.

had that area of practice in Oklahoma County, which includes Tinker AFB, at the time of the Wynn contract. (GX-3). Further, the Local 124 claimed the Wynn roof work at issue. Nelson explained that SMWs do 100% of the work involved in the installation of standing seam metal roofs and do not use any additional laborers. (Tr. 35-47).

Tammy Moreno

Moreno is a contract specialist with the Army Corps of Engineers in Tulsa, Oklahoma. She has held that position for two years. Prior to that assignment, she was a contractor industrial relations assistant. In that position Moreno was assigned to specific construction projects and was responsible for reviewing payrolls and ensuring labor compliance with the contracts. These duties involved the enforcement of the DBA, for which she received classroom and on-the-job training regarding surveys, investigations, and overall enforcement of the DBA. (Tr. 50-51).

Moreno was involved in the investigation of Respondents under the Wynn contract. The investigation involved allegations that Respondents 1) misclassified SMWs as MBEs, and 2) misclassified SMWs as laborers. Moreno's role in the investigation was to ensure proper payment of the workers, as Respondents had already been investigated and found to owe back wages. Her first step in the investigation was to forward a July 1995 letter to Respondents seeking payment of back wages resulting from the misclassification or a response to the allegations. The letter also offered Respondents an opportunity to meet with Moreno to discuss the situation. She received no response. Moreno testified that she made numerous additional attempts to contact Respondents over the next year seeking support from Respondents' for their classification of workers, but never received anything. (Tr. 51-54).

In July 1996, Respondents contacted Moreno seeking her back wage computations.[7] The revised computations were forwarded to Respondent, who disagreed with the total and refused to pay. In September 1996, Moreno again revised the total back wages owed in an attempt to settle the dispute, but Respondent again refused to pay. Based on Respondent's refusal, Moreno informed the prime contractor Wynn that she was going to forward her report on this matter to the DOL. Wynn agreed to withhold funds pending the DOL decision. Moreno forwarded her report and supporting information to the DOL in January 1997. (Tr. 55-60).

Moreno had previously been involved with the DBA investigation of Respondents at the Pantex plant in Amarillo, Texas beginning in February 1990. That investigation involved Respondents' alleged misclassification and underpayment of workers under two contracts for the

[7] Moreno originally calculated the back wages owed at $38,603.91. This was based on all workers being classified as SMWs due to Respondents failure to provide any information in support of an alternative classification. After reviewing her interviews and payrolls and speaking with some workers, she revised the total to approximately $32,000.

construction of metal buildings.[8] The wage determination for the first contract (Centric-Jones) did not contain a classification for MBEs. Pursuant to their rights under the DBA, Respondents applied for such a classification to be added. Moreno's office disagreed with the request for the additional classification, but forwarded the request to the DOL at Respondents' urging. The DOL denied the request for the addition of the MBE classification and determined that SMW was the appropriate classification for the work. (Tr. 61-70).

The wage determination on the second contract at the Pantex plant (Caddell) also did not contain a classification for MBEs. Respondents again requested that such a classification be added. They supplied no information in support of their request for an additional classification and the request was denied by the DOL. (RX-2). Respondents then moved to have the DOL reconsider the decision. After reconsideration, the DOL ruled that Respondents could use a MBE classification on the Caddell contract, but required them to employ a higher rate of compensation than that being utilized.[9] (RX-4). Consequently, Respondents remained liable for back wages despite the approval of the MBE classification. These back wages were eventually paid, but proper procedure was not followed by Respondents. (Tr. 70-76).

Moreno explained that under the DBA it is the obligation of the contractor to keep accurate records regarding the segregation of the workers hours among the different classifications of work. These records were never provided to her office by Respondents. (Tr. 90).

Nancy S. Wright

Wright is a contractor industrial relations specialist with the Army Corps of Engineers in Tulsa, Oklahoma. She has held this position for approximately ten years. Wright is responsible for contractor compliance with the labor laws in government contracts and verifying that wage determinations are formulated correctly. She is also responsible for enforcement of the DBA. She has received classroom, DOL-sponsored, and on-the-job training in the enforcement of the DBA. (Tr. 106-107).

Wright was the supervisor of the investigation of Respondents under the Wynn contract. She directed Carrie Moore to conduct laborer interviews of Respondents' workers because she was aware of three previous contracts under which Respondent had misclassified workers. Following the interviews, during which workers were determined to be misclassified, Wright called a meeting with Respondents in February 1994. On her way to the meeting with Respondents, Wright stopped by the

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[8] Respondent was the subcontractor on both contracts. Centric-Jones was the prime contractor on the first contract and Caddell was the prime contractor on the second contract.

[9] Respondents had been compensating the MBEs at a rate of $12 per hour. The DOL ordered that they be compensated at a rate of $13.25 per hour. (RX-4).

Wynn jobsite and observed the building which was the subject of the Wynn contract and realized that it was not metal building, but rather a masonry building with a standing seam metal roof. At the meeting, Wright informed Respondents that in that region the area of practice of standing seam metal roof installation was claimed by SMWs. Respondents defended their selection of the MBE classification with reference to the labor conference[10] shortly after the contract was awarded during which Nancy Khaleel and Tom Ortiz of Respondents asked Wright if she planned to contest their MBE classification. Wright testified that she assumed that Respondents were constructing a metal building and made an off-hand comment that she "[wouldn't] fight that fight again".[11] (Tr. 108-116).

Following the February 1994 meeting with Respondents, Wright informed the prime contractor (Wynn) that based on Respondents' misclassification of workers a withholding of funds would be placed on the Wynn contract. Immediately after the withholding was in place Respondents ceased submitting the required certified payrolls. These payrolls are required to be submitted on a weekly basis under the DBA. Because Respondent failed to make the payroll information available to Wright, she was required to estimate the proper amount for the withholding. She was able to make an accurate computation when Respondents finally provided her with the payroll information in January 1995, approximately six months after the job had been completed. Wright forwarded the accurate computations to Respondents at that time, but received no response. She forwarded the information again six months later. (Tr. 117-120).

Wright explained that in order for a trade to be designated as the proper classification to perform a specific type of work under a government contract, that trade must not only claim the area of practice, but also be actively performing the work in that geographic region for the period preceding the opening of the bid. In making the determination of the appropriate classification for the Wynn work, Wright contacted Gary Nelson and was informed that SMWs claimed the work being performed. She later confirmed, through examples provided by Nelson, that SMWs had been performing standing seam metal roof work during the period prior to the opening of the bid. (GX-3) (Tr. 108-114).

Wright testified that the MBE classification was on the wage determination for the contract, but simply because a classification appears on a wage determination does not automatically permit the contractor to use it. The classification selected must be that which includes the trade that claims the area of practice in that geographic region for the work to be performed. According to Wright, MBEs construct metal buildings and the subject of the Wynn contract was not a metal building. Metal buildings are normally pre-engineered with metal roofs and sides. The Wynn building was a masonry building with a metal roof. Wright also explained that with regard to MBEs, a common laborer can unload materials and deliver them to the stagging area, but any work from that point must

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[10] The conference was held in order to instruct the contractors of the payroll and administrative requirements under a government contract.

[11] Wright was presently involved in an on-going classification dispute with Respondents regarding a prior contract.

be performed by the MBE. With regard to SMWs, no common laborers are permitted to perform any part of the job. All tasks, including the unloading of materials, is performed by the SMWs and their apprentices. (Tr. 108-113).

Wright explained that prior to entering into the bid phase for government contracts such as the one at issue here, the contractors can easily obtain information regarding the proper classification of workers. She stated that they can read the wage decision to determine which trade has the area of practice for the work to be performed or they can call the DOL to obtain similar information. This information will also indicate to the contractors whether the compensation rate is a negotiated or non-negotiated rate. If it is a negotiated rate, it acts as an indication that a local union claims that area of practice. The union should be contacted in order to specifically determine which types of work they claim and how they segregate the work hours among workers. If it is a non-negotiated rate, the contractor should contact local non-union contractors to determine how the work hours are segregated. (Tr. 118-119).

Wright had been involved in three previous investigations of Respondents involving misclassification and underpayment of workers. The first was in 1988 and involved a contract to construct a hangar at Tinker AFB (Carruthers). Respondents had was allegedly misclassified SMWs as MBEs and SMWs as common laborers. Because the DOL was unable to determine a satisfactory area of practice for the work being performed, it did not take exception to Respondents' MBE classification with regard to the journeymen.[12] There was no agreement, however, which allowed for Respondent to classify the journeymen as common laborers and Respondent remained liable for underpayment in this regard. Moreover, the dispute took nearly two years to resolve, at least partially due to Respondents' failure to respond to any inquires from the investigating office. Wright explained that the major concern with such a long delay in payment of owed wages is that with the passage of time it becomes increasingly difficult to locate the workers to whom the money is owed. (Tr. 122-124, 145-147, 154).

Wright was also involved in the investigation of Respondents regarding the Centric-Jones and Caddell contracts at Pantex. As discussed above, Respondents filed a form 1444 request for additional classification seeking to add MBEs to the wage determination. After the requests were filed, Wright spoke with the foremen of each job and concluded that she could not recommend the additional classification. Further, the foremen were instructed three to four weeks into performance of the contract that the journeymen should be classified as SMWs and that Respondents should keep records accordingly. Respondents did nothing to comply with these instructions. The DOL eventually denied the request on both contracts, but approved it on reconsideration on the Caddell contract. (Tr. 124-127, 158-159).

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[12] The term "journeymen" is a DBA classification which includes all skilled workers, including MBEs and SMWs.

Based on Respondents' misclassification of workers (SMWs as MBEs, and SMWs as common laborers) and failure to keep proper records in performance of the Carruthers, Centric-Jones, Caddell, and Wynn contract, Wright recommended to the DOL contracting officer that Respondents be debarred from participation in government contracted construction jobs for a period of not less than three years. She testified that her recommendation is adopted as a rule by the contracting officer, it then proceeds through the channels of the DOL accompanied by the report of the contracting officer. The final decision on debarment remains with the DOL. Wright explained that her criteria for determining if a debarment recommendation is proper includes whether the contractor was negligent in doing its homework prior to the bidding process, whether the contractor acted responsibly in the process, whether the contractor made a good faith effort to satisfy the record keeping requirements, and whether the failure of the contractors to comply with any of the standards was willful. In her opinion, Respondents' actions were a willful violation of the DBA. Wright reached this conclusion based on Respondents' repeated violations of a similar nature. (Tr. 130-133).

Martin Lee Barrow, Sr.

Barrow is the Director of Enforcement, Wage and Hour Division, United States DOL, at the San Antonio, Texas district office. He has held that position for twenty years. His duties include the supervision of DBA investigations by the district office. Barrow has received classroom, DOL-sponsored, and on-the-job training in the enforcement of the DBA. He has supervised in excess of 2000 DBA investigations in his career. (Tr. 163-164).

Barrow supervised the investigation into Respondents at Lackland AFB in San Antonio, Texas in 1988. The contract called for the construction of a standing seam metal roof. Pete Muriel was the investigating officer who performed the laborer interviews and discovered misclassification of workers. Respondents' payrolls indicated a classification of MBEs when the correct classification should have been SMWs. Both MBE and SMW appeared on the wage determination for the contract, but Barrow concluded that based on the area of practice survey the workers were misclassified. Barrow had directed Muriel to conduct an area of practice survey to determine which trade had claim to the construction of standing seam metal roofs. The survey revealed that the area of practice was claimed by SMWs. This information was conveyed to Respondents. Respondents disagreed with the classification, but offered no "hard evidence" in support of their MBE classification. Barrow next forwarded a letter to Respondents' attorney (Salazar) informing him that the area of practice in question belonged to SMWs, but he received no response. Finally, Barrow held a conference with the prime contractor and forwarded his case to the DOL for a hearing and withholding of funds. (166-173).

Over one year later, Respondents' attorney contacted Barrow with an offer to settle the dispute, which Barrow accepted. The settlement called for Respondents to be paid 75% of the $45,000 of withheld funds and a promise by Respondents of future compliance with the DBA. Barrow testified that an agreement from the contractor to comply in the future is a mandatory

requirement for any settlement which he approves. (Tr. 173-174).

Glyna Smith

Smith is an investigator in the Wage and Hour Division, United States DOL. She has held that position since 1983. Her duties include the enforcement of the DBA and she has be trained in that capacity. (Tr. 190-191).

Smith investigated Respondents under the DBA in April 1992 with regard to two contracts (hereinafter Diamond Back and Sedalco) at the Supercollider in Waxahachie, Texas. The investigation was initiated as a result of worker complaints regarding the rate of compensation. The workers were being paid at a rate less than the stated amount for SMWs on the wage determination. Smith forwarded a letter to Respondents informing them that she would need to review the payroll records for the project. Her review revealed that Respondents' employed multiple classifications of workers under the two contracts despite the fact that the contract manager, PB/MK,[13] had already informed them that all workers should be classified as SMWs. PB/MK had refused Respondents' request to seek an additional classification from the DOL and instructed Respondents to correct the payrolls and pay the workers for previous under payments. (Tr. 191-195).

During the course of her investigation, Smith determined that Respondents had misclassified and underpaid a variety of workers, including mechanics as common laborers, SMWs as common laborers, and SMWs as iron workers. She verified these violations through laborer interviews. Smith also discovered that Respondents had kept faulty records which contained no indication of how the work hours of the workers were segregated among different jobs which they performed. Smith initially computed the underpayment to amount to approximately $20,000 and held a conference in June 1992 to discuss the situation with Respondents. (Tr. 196-198).

At the conference Respondents disagreed with Smith's findings, but offered no explanation for the segregation of hours and presented no support for their classifications. The matter was finally settled in July 1992, after two additional meetings and the involvement of PB/MK and the Department of Energy. The case was settled for $8995 and a commitment to future DBA compliance. No funds were ever withheld from Respondents during the dispute. (198-201).

[13] Due to the special nature of the Supercollider project, PB/MK Team acted in the role of contract supervisor and provided the oversight of the construction phase of the project. Diamond Back and Sedalco were the prime contractors between PB/MK and Respondent, but all contracts were overseen by PB/MK.

Jeffrey P. Darby

Darby is an investigator in the Wage and Hour Division, United States DOL, at the Beaumont, Texas office. His duties include the enforcement of the DBA. He has received classroom and on-the-job training in the enforcement of the DBA. (Tr. 205).

Darby investigated Respondents under the DBA in November 1995 with regard to two contracts for the construction of the federal correctional complex in Beaumont, Texas. The investigation was initiated following worker complaints that they were classified as common laborers while performing SMW work. Darby requested Respondents' certified payrolls and conducted laborer interviews. The investigation confirmed through interviews and observation that several workers classified as common laborers were performing SMW work. These workers were using tools of the trade, including snips, screw drivers, clips, and other SMW tools, to install sheet metal roofing on masonry buildings. Darby confirmed through the local unions that the type of work being performed was claimed by SMWs. (Tr. 206-211).

The work on the project began in March 1995. Respondents were required to submit payrolls to the prime contractor on a weekly basis. As on November 1995, when Darby initially requested them, no certified payrolls had ever been submitted. Darby did not receive the payrolls until March 1996. No explanation for the delay was ever provided. Based on the payrolls, Darby computed the underpayment resulting from the misclassification of workers to be approximately $14,000. He forwarded the computations and total to Respondents and requested that they contact him to discuss the situation, but received no response. He contacted Respondents two additional times, but again received no response. Based on Respondents' refusal to respond, Darby wrote up the file as a refusal to pay back wages owed and forwarded it to his supervisor in April 1996. He finally was contacted by Respondents on May 15, 1996 and was informed that they disagreed with his findings. Respondents provided no support for the disagreement or for their classifications. Darby believes that the case was resolved in July 1996 for the full amount of back wages determined. (Tr. 211-214).

Shirley Ebbesen

Ebbesen is a regional wage specialist in the Wage and Hour Division, United States DOL. She has held this position since June 1997. Her duties include the review of all government contract investigation files forwarded from her eleven state region to the regional office for further action. She also oversees the wage survey program that determines DBA wage rates for the eleven state region. Prior to her current position, Ebbesen was a senior wage analyst and a wage analyst in the government contracts section of the Wage and Hour Division regional office. As a senior wage analyst, she reviewed wage surveys conducted by other analysts for accuracy prior to forwarding the rates to Washington, D.C. for publication. As a wage analyst, she was responsible for conducting the wage surveys in order to determine the DBA wage rates in the region. Ebbesen also previously

held the position of investigator in the Wage and Hour Division. She has been employed by the DOL for eighteen years. (Tr. 215-217).

Ebbesen was involved in the decision to recommend debarment of Respondents. She testified that one of the factors she considers when recommending debarment is whether the contractor has knowledge of the law (have they been investigated before?) on which the recommendation is based. Ebbesen asked each district office if Respondents had previously been investigated and three offices[14] forwarded investigation files of Respondents to her. She also explained that there are many avenues available to a contractor in determining the proper wage classification for workers. These include reviewing the wage determination, contacting the contracting agency, contacting the DOL, and contacting the local unions or non-union contractors. Her next step in the recommendation process is to review the files to determine the type of violations, how the contractor conducted themselves during the process, and whether the back wages were paid. Here, she found that all the previous violations were the same or very similar in nature. All included the misclassification of SMWs as MBEs, the misclassification of journeymen as common laborers, the failure to maintain proper records segregating the work hours, and an extended delay in resolving the investigation. (Tr. 221-225).

Incorporating the previous violations into her analysis, Ebbesen found Respondents' actions under the Wynn contract to be in willful violation of the DBA. She concluded that based on past experiences, Respondents knew the law, knew how to comply with the law, and knew the avenues to obtain guidance in their decisions. Further, publications had been provided to Respondents during previous investigations which detailed their responsibilities. Despite this knowledge Respondents continued to misclassify and underpay workers. She added that it is the contractors responsibility to ensure proper classification and payment of workers. Based on the willful violation under the jobsite contracts, Ebbesen recommended that Respondents be debarred. (Tr. 226-228).

Ebbesen testified that efforts by a contractor to improve on past violations would be a factor in her decision to recommend debarment, but following the initial investigation Respondents made no effort on future contracts to ensure that workers were being properly classified and compensated. Ebbesen uncovered no evidence that any of the misclassifications were a result of a good faith mistake. Finally, she saw no indication that Respondents took any steps to improve their record keeping. She added that it is rare to be faced with a case of repeated violations of such a similar nature. (240-242).

Mohamed Khaleel

Khaleel is the president of Berbice Corporation. He has a masters degree in civil engineering. Khaleel testified that Berbice is involved only in the construction of metal buildings or related components and that all of the contracts discussed with regard to this matter involved the

[14] Beaumont, San Antonio, and Dallas regional offices.

construction of prefabricated metal buildings or the installation of metal roofs or siding. Through Berbice, Khaleel has been involved in the bidding on and performance of government contracts since 1985. He is the individual responsible for formulating all bids on government contracts for Berbice. In deciding on the appropriate classification for workers, he examines the contract specifications in order to determine the type of materials needed to perform the contract. He then selects the wage classification which he feels is the most appropriate to install the materials. (Tr. 267-268, 305-308, 345).

At the time of the 1987 Lackland AFB contract Khaleel was experienced in bidding process, as Berbice had previously performed 10-20 government contracts. Khaleel testified that he determined the worker classifications for the bid for that contract based on the specifications of the job which were included in the bidding packet of information. He selected an MBE classification because in his opinion it most closely suited for the work to be performed, which was the installation of metal roofs. He did not verify his decision with any party or contact the local unions to determine who claimed that area of practice. Khaleel testified that he was not aware that the unions were supposed to be involved in the process. (Tr. 268-275).

After work began, Khaleel was contacted by investigator Pete Muriel and informed that problems had arisen regarding his MBE classification of workers. As a result, an area of practice survey was conducted, in which Respondents' attorney participated. Khaleel does not recall speaking with his attorney regarding the results of the survey. He testified that the reason provided to him why SMW was the appropriate classification, as opposed to MBE, was that the roofing at Lackland AFB was for residential housing, which did not qualify as metal buildings. This was confirmed in the March 1, 1989 letter from Muriel to Khaleel. (RX-1). The letter also indicated that such a MBE classification was correct when "the buildings were metal buildings like hangars, maintenance and motor pool and were used for those purposes." (RX-1) (Tr. 309-31).

Regarding the Centric-Jones and Caddell contracts at Pantex, Khaleel testified that Berbice constructed two all-metal enclosed walkways. He based his classification of workers as MBEs on the "form that explains the bidding process" and the letter from Muriel, which he interpreted to mean that he could use MBEs on all-metal projects. The MBE classification, however, did not appear on the wage determination. After seeking and being denied the additional MBE wage classification, Khaleel successfully appealed the denial on the Caddell contract. (RX-4). He did not appeal the ruling on the Centric-Jones contract because the project was nearing the end and needed to be closed out. Khaleel testified that the projects were very similar. (Tr. 276-283).

Khaleel used the MBE classification on the Diamond Back and Sedalco contracts at the Supercollider in 1992 because the contracts called for the construction of all-metal buildings, despite the fact that the MBE classification was not listed on the wage specification. He did not speak with the DOL, local unions, or other contractors prior to submitting the bid. Khaleel's request for the additional classification was rejected by PB/MK approximately 8-10 weeks into the project. According to Khaleel, the denial was based on the fact that the wage classification contained a classification which could perform the required work (SMWs), but he disagreed with this conclusion. Khaleel testified that Respondents did not appeal the decision because they were informed that the

PB/MK decision was final. (Tr. 287-290, 323).

Khaleel used the MBE classification on the Carruthers contract at Tinker AFB because the contract called for the construction of an all-metal hangar and MBE was listed on the wage specification. Khaleel testified that he relied on the wage specification and the March 1, 1989 letter from Muriel. (RX-1). The bid, however, was submitted in 1988, prior to Muriel's letter. Again, Khaleel did not contact any party prior to submitting the bid. The issue of misclassification arose near the end of the project and funds were withheld by the prime contractor. Khaleel testified that Respondents would not enter into a settlement agreement because they were convinced that the classification was correct. The MBE classification was eventually upheld and Respondents received the withheld funds approximately two years later. (Tr. 291-293, 329).

Regarding his decision to employ the MBE classification on the Wynn contract, Khaleel testified that MBE was listed on the wage specifications and the roof to be installed was very similar to the roof on the Carruthers project, for which the MBE classification had been upheld. Further, he had instructed Nancy Khaleel and Tom Ortiz to ask Nancy Wright at the labor conference for the project whether a dispute would arise if the workers were classified as MBEs. Although Khaleel was not present at the conference, he was informed by Nancy Khaleel and Ortiz that Wright would not have a problem with such a classification. (Tr. 294-300).

Regarding Respondents' record keeping, Khaleel testified that the each job foreman was responsible for keeping the records of the segregation of hours which would support the certified payrolls. He explained to the foremen what each type of work entailed and checked on them at various times throughout the performance of the contract. These records were not provided to investigators when requested during the course of any of the various investigations of Respondents. Khaleel explained that this was because he did not understand that these were the records which the investigators sought. (Tr. 343-344).

Khaleel testified that despite being involved in government contracts since 1985, prior to 1993-94 he was not aware that he was required under the DBA to determine the proper wage classification and area of practice prior to submitting a bid for the contract. He believed that he could rely solely on the job specifications. He was unaware that the area of practice for a type of job may be different in different geographic regions. He never learned the distinction between negotiated and non-negotiated rates, but never inquired as to how wage rates were determined. (Tr. 320, 345-347).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The DBA provides that all Government construction contracts in excess of $2,000 performed within the United States shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics based upon a specified schedule furnished by the Secretary of Labor (Secretary). This schedule is based upon wages determined by the Secretary to be prevailing for

corresponding works on similar projects in the area in which the work is to be performed. (49 Stat. 1011, 40 U.S.C. § 276a). The language and legislative history of the Act plainly show that it was not enacted to merely benefit contractors, but rather to protect their employees from being paid substandard wages by fixing a floor under wages on Government projects. To achieve this purpose Congress directed the Secretary to determine the appropriate minimum wages for each project on the basis of prevailing local rates. United States v. Binghamton Const. Co., Inc., 347 U.S. 171, 177 (1954); Bldg & Const. Trades' Dept., AFL-CIO v. Martin, 961 F.2d 269, 271 (D.C. Cir. 1992); Bldg. & Const. Trades' Dept., AFL-CIO v. Donovan, 712 F.2d 611, 614 (D.C. Cir. 1983); Carpet, Linoleum and Resilient Tile, etc. v. Brown, 656 F.2d 564, 565 n.1 (10th Cir. 1981). In addition to protecting local wage standards, the DBA also serves to give local laborers and contractors fair opportunity to participate in building programs when federal money is involved by preventing contractors from basing their bids on wages lower than those prevailing in the area. L.P. Cavett Co. v. U.S. Dept. Of Labor, 101 F.3d 1111, 1113 (6th Cir. 1996).

In making wage determinations the Secretary generally classifies projects into four categories: "heavy", "highway", "building", and "residential" based upon administrative convenience and historical patterns within the construction industry. Commonwealth of Virginia, ex rel. v. Marshall, 599 F.2d 588, 593 (4th Cir. 1979). The wage determinations are based upon a determination by the Secretary of the prevailing wages paid to corresponding classes of laborers and mechanics employed on similar construction projects in the area where the work is to be performed. 29 C.F.R. 1.2 (a)(1) provides:

> The prevailing wage shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

The Secretary is responsible for making the final determination concerning rates of pay and classifications of employees on each project. Nello L. Teer Company v. United States, 348 F.2d 533, 539 (1965); Plumbers Local Union No.27, 27 ARB No 97-106 (July 30, 1998). In determining which classification of worker performs certain work, the local industry practice prior to issuance of the wage determination governs. The party who contests an adverse administrative determination bears the initial burden of supporting its contention with factual data showing a different practice or discernible pattern existing prior to the issuance of wage determination in dispute. Carabetta Enterprises Inc., WAB 74-4, 74-4A (Jan. 30, 1976). To overturn an initial administrative area of practice finding, there must be valid, clear, and consistent evidence of a contrary practice. Wage Rate for Rebar, Greggo and Ferraro, WAB 82-6 (May 11, 1983).

The substantive correctness of the Secretary's wage determination is not subject to judicial review. Rather, review is limited to due process claims and claims of noncompliance with statutory

directives or applicable regulations. Fry Brothers Corp. v. Department of Housing, etc., 614 F.2d 732, 733 (10th Cir. 1980); *see* Califano v. Sanders, 430 U.S. 99, 108 (1977).

Neither the DBA or implementing regulations define the actual scope of the work a worker may perform. 29 C.F.R. § 5.2(m) states only that laborer and mechanic includes those workers whose duties are manual and physical in nature, including those workers who perform the work of a trade, as distinguished from mental or managerial work. Exact delineation of duties performed and tools used are matters that are defined on a case-by-case basis as reflected in the particular area of practice prevailing in a locality. Where the wage determination does not specify the duties of either sheet metal workers, metal building erectors, or laborers, and union rates prevail in the wage determination, then the Secretary turns to the union signatories to help determine area practices and jurisdictional lines. Johnson-Massman Inc., ARB No.96-118, 90-DBA-99 (Sept. 27, 1966); Fry Brothers Corporation, WAB Case No. 76-7 (June 14, 1977); Jos. J. Brunetti Const. Co. and Dorson Elec. & Supply Com., Inc., WAB No. 80-9 (Nov. 18, 1982).

Contractors such as Respondents, besides being required to properly pay and classify workers under the applicable wage determination, are also responsible under 29 C.F.R. § 5.5 (a)(3) for submitting weekly certified payrolls containing the names, addresses, social security numbers, correct classifications, hourly rates of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all laborers and mechanics. Delfour, Inc., ARB No. 96-186 (May 28. 1997).

As previously discussed, this dispute presents two issues which must be resolved. The initial determination must be whether Respondents did indeed misclassify and underpay SMWs as MBEs and common laborers. If the record supports such a conclusion, I must determine whether this misclassification and underpayment rose to the level of a disregard of their obligations to employees as to support a finding of debarment pursuant to Section 3(a) of the DBA.

A. Misclassification

There is little, if any, factual dispute surrounding the classification of Respondents' workers under the Wynn contract. The uncontradicted evidence established the type of work being performed under the contract and the classification of the workers performing the work. The Solicitor presented the testimony of Carrie Moore of the Army Corps of Engineers, which established that Respondents' workers were installing a standing seam metal roof at the Wynn jobsite and used tools of the trade in the process. Her interviews confirmed that the workers were classified as MBEs and laborers. The Solicitor presented the testimony of Gary Nelson of the Sheet Metal Workers' Local 124, which established that the area of practice of installing standing seam metal roofs in the county (Oklahoma County) in which the Wynn contract was performed was sheet metal work and claimed by the Local 124 during the period of the contract. The examples of SMWs performing standing seam metal roof installation provided by Nelson to Brenda Anderson of the Corps of Engineers confirmed that SMWs performed this type of work during the period prior to the opening of the bid process. (GX-3). Finally, the Solicitor presented the testimony of Nancy Wright of the Army Corps of Engineers, which

confirmed that the Wynn contract called for the installation of a standing seam metal roof, that such work was claimed by the Sheet Metal Workers' Local 124, and that SMWs did not incorporate laborers in the performance of their trade. Respondents did not challenge any of the testimony presented.

Respondents admit that the workers were classified as MBEs and laborers and that they were installing a standing seam metal roof, but argue that the classifications were proper. Respondents assert what is essentially an estoppel argument, maintaining that the classification cannot be challenged as improper because it was based on the alleged approval of contracting officer Nancy Wright, as well as previous DOL approval of the MBE classification under a prior contract for similar work. Respondents' reliance on the alleged approval is misplaced.

Initially, I find that the record clearly established that the area of practice at issue (installation of standing seam metal roofs) was properly claimed for SMWs by the Local 124. Further, I find that Respondents' workers were clearly engaged in this type of this work during performance of the contract. There has been no evidence presented which would contradict such a finding. Consequently, I find that the proper classification for the workers performing the Wynn contract should have been SMW. The uncontradicted testimony of Nelson and Wright also established that SMWs perform all of the work involved in the installation of standing seam metal roofs, thus any laborer classification is also found to be improper.

In response to Respondents' affirmative defense, I initially find that the record does not support the claim that contracting agent Nancy Wright approved a MBE classification for the Wynn contract. Wright was the only person in attendance at the labor conference and party to the exchange to testify at this hearing. She credibly testified that she made a simple offhand remark in reference to her previous and ongoing classification disputes with Respondents. I was not presented with any alternative firsthand account of the exchange nor provided with any reason to question the accuracy of Wright's interpretation. Moreover, I find it unthinkable that a reasonable contractor with the history of classification disputes as possessed by Respondents would place complete reliance on such an exchange. I find any reliance on such an exchange as a classification approval to be unreasonable, thus negating any good faith argument of Respondents.

Even were I to accept Respondents' contention that Wright's comments at the labor conference constituted an approval of the MBE classification, Respondents' defense must fail. It is well-settled that a contractor cannot escape liability for misclassification or underpayment of wages by reliance upon a contracting officer's advice. It is the Secretary or his designatee (Administrator of Wage and Hour Division) who have the sole authority under the DBA and the regulations for interpretation and enforcement of the proper wage rate and employee classifications. Warren Oliver Company, WAB 84-8 (Nov. 20, 1984); Sentinel Electric Company, WAB 82-9 (April 5, 1984); United Construction Company, Inc., WAB 82-10 (Jan. 10, 1983); Jos. J. Brunetti Construction, *supra*; Metropolitan Rehabilitation Corp., WAB 78-25 (Aug. 2, 1979); Tollefson Plumbing and Heating, WAB 78-17 (Sept. 24, 1979). Moreover, a contractor cannot rely upon the advice of a lower echelon Wage and Hour official to justify his wage rate or employee classifications. Werzalit of America, Inc., WAB Case No. 85-19 (April 7, 1986); *see also* Ross Brothers Construction, Inc.,

WAB Case No. 87-36 (Nov. 21, 1988). Here, Respondents' present just such an argument, attempting to avoid liability for the misclassification based upon their reliance on the alleged approval of contracting officer Nancy Wright. The Board has made clear that such reliance is improper. Likewise, reliance on an approved classification on a prior, unrelated contract is also improper. Despite the conclusion of Respondents' that the work to be performed and the location of the performance under the Wynn contract were similar to the Carruthers contract, where MBE classification had been approved, they are not free to apply the previous determinations to the current contract at their own discretion. If they choose to do so, they proceed at their own peril. *See* Tele-Sentry Security, Inc., WAB Case No. 87-43 (June 7, 1989). Simply put, Respondents' explanation that they had done the same thing before and not been found in violation is not a satisfactory excuse. *See* Phoenix Paint Co., WAB Case No. 87-8 (May 5, 1989).

When bidding on and performing a government construction contract under the jurisdiction of the DBA, it is the responsibility of the contractor to ensure that work performed by their employees is in compliance with the Act. P & N Inc./Thermodyn Mechanical Contractors, Inc., ARB Case No. 96-116 (Oct. 25, 1996). Respondents' did not live up to their responsibility under the Wynn contract, making no reasonable effort to comply. Consequently, I find Respondents' to have misclassified their workers under the contract in violation of the DBA.[15] I must now determine whether this misclassification supports a finding of debarment as sought by the Solicitor.

B. Debarment

The standard for debarment in a DBA proceeding is set forth in the regulations at 29 C.F.R. § 5.12(a)(2), which provides in pertinent part:

> (a)(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors and subcontractors and their responsible officers ... who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

Debarment has consistently been found to be a remedial rather than punitive measure so as to encourage compliance and discourage employers from adopting business practices designed to

[15] The extent of the underpayment resulting from the misclassifications is not determinable from the record, as Respondents' payrolls were not offered into evidence.

maximize profits by underpaying employees in violation of the DBA. *See*, United States v. Bizzell 921 F.2d 263, 267 (10th Cir. 1990); S.A. Healy Co. v. Occupational Safety & Health Review Comm'n, 96 F.3d 906, 911 (7th Cir. 1996); Minor Construction Co., 95-DBA-42 (ALJ June 12, 1997). Debarment is an appropriate compliance tool because it discourages attitudes that violations of the DBA will not be detected, and if they are, that said violations will be lightly treated by requiring only a confession of violation and restitution of backpay. Phoenix Paint Co., WAB Case No. 87-8 (May 5, 1989).

Violations of the DBA do not *per se* constitute a disregard of an employer's obligations within the meaning Section 5.12(a) so as to result in automatic debarment. This is apparent where an employer makes a valiant or good faith effort to comply. In the Matter of Mr. Paint, Inc., et al., 92-DBA-27 (ALJ Mar. 31, 1995). To support a debarment order, the evidence must establish a level of culpability beyond mere negligence. It is not necessary, however, to show that an employer's officers had direct knowledge of the misconduct. Allowing violations to persist can constitute evidence of an intent to evade or a purposeful lack of attention to a statutory responsibility in support of debarment. P & N Inc./Thermodyn Mechanical Contractors, Inc., ARB Case No. 96-116 (Oct. 25, 1996).

In this matter, the Solicitor seeks debarment of Respondents based on their misclassification and underpayment of workers under the Wynn contract and an existing history of similar violations. Respondents maintain that they have always acted in good faith in attempting to comply with their obligations to their workers, thus debarment is not warranted.

I do not hesitate to reach the conclusion that Respondents' knew or should have known their responsibilities to their workers under the DBA. Not only do they have a long history of bidding and performance of government construction contracts under the DBA, but they have an almost equally long history of being investigated for classification and underpayment violations of a strikingly similar nature. I find it to be beyond comprehension that Mohamed Khaleel, an individual with a masters degree in engineering, could have performed in excess of thirty[16] government construction contracts since 1985 without any comprehension of many of the core responsibilities and obligations that are the basis for the DBA, including the process for correctly classifying and compensating employees. The Board has held that there must be a presumption that an employer who has the savvy to understand government bid documents and to bid on Davis-Bacon Act jobs knows ... what the company and its competitors must pay when it contracts with the federal government on a Davis-Bacon Act job. Phoenix Paint Co., WAB Case No. 87-8 (May 5, 1989). I find such a presumption to be applicable to the matter at hand. Respondents' plead ignorance as an excuse for their failure to meet their responsibilities to their workers as imposed by the DBA, but they never made any effort to educate themselves on the proper procedure to be followed despite the many avenues available. Blissfully ignorant is no way to operate a business and is certainly no defense to debarment under the DBA. P & N Inc./Thermodyn Mechanical Contractors, Inc., ARB Case No. 96-116 (Oct. 25, 1996);

[16] Although the record does not establish the total number of government contracts performed by Respondents, Khaleel testified that he had completed 25-30 at the time of the Pantex job in 1990.

L.T.G. Construction Co., WAB Case No. 93-15 (Dec. 30, 1994). Because the facts of the case impute knowledge of their responsibilities under the DBA upon Respondents, I find their actions to be in deliberate disregard of their obligations to their employees.

Respondents' argue that any misclassification under the Wynn contract was the result of their good faith reliance on information allegedly conveyed by Nancy Wright, thus mitigating their fault. This good faith argument rings hollow. If Respondents' did not know their true obligations under the DBA, their lack of knowledge was the result of a conscious effort to remain uninformed. I find it more likely that Respondents' were aware of their obligations and made a poor business decision not to satisfy them. Even accepting Respondents' argument on its face, however, offers them no relief.[17] If Khaleel's classification decision was indeed made in good faith based on information conveyed to him, this good faith would have ended as of his February 1994 meeting with Wright when he was informed that his classifications were not proper. Respondents made no effort to conform to Wright's instructions, but rather continued to misclassify and underpay. After that time, Respondents' continued misclassification and underpayment was nothing less than willful.

The situation at hand is analogous to that faced in P & N Inc./Thermodyn Mechanical Contractors, Inc., ARB Case No. 96-116 (Oct. 25, 1996). There, the Board found that a debarment recommendation was warranted despite the absence of a flagrant, clearly intentional violation such as a deliberate payroll falsification. In P & N Inc./Thermodyn Mechanical Contractors, Inc., there was clear evidence of misclassification and underpayment which continued even after the contractor was advised by a wage and hour investigator that the classifications were improper. The Board found such action by the contractor, especially after reminded of their responsibilities, to be more than merely negligent. The Board imposed a duty on the contractor to ensure compliance with the DBA after the reminder, but the contractor took no action to correct their classifications or ensure future compliance. Citing L.T.G. Construction Co., WAB Case No. 93-15 (Dec. 30, 1994), the Board stated that "'conduct which evidences an intent to evade or a purposeful lack of attention to a statutory responsibility' supports debarment under the DBA."

My conclusions in this matter are buttressed by Respondents' history of strikingly similar violations. This case exhibits just another example of Respondents' disturbing pattern and practice of evading the responsibilities imposed on government construction contractors by the DBA with hopes of avoiding detection and reaping ill-gotten financial rewards. As the Board reasoned in Phoenix Paint Co., WAB Case No. 87-8 (May 5, 1989),

> [i]f this is not a case for debarment and such a view were spread to other ALJ debarment cases, employers who have deliberately adopted a business plan to

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[17] As previously discussed, I find any reliance placed on the exchange between Wright and Respondents' agents was unreasonable. Further, given Respondents' history of classification disputes, I find it difficult to believe that total reliance would be placed on such an exchange, regardless of their interpretation.

> underpay their employees may look upon Davis-Bacon enforcement in only two ways: (1) The prospect of not being detected is good, and (2) if they are, all they need to do is confess the violation and using the Department of Labor as their agent, make a back-pay restitution in the instances in which violation has been detected and proved. The prospect of the debarment penalty as a preventative, prophylactic tool for the enforcement of the Act will be lost.

Such reasoning cannot be more applicable than to the matter at hand. Moreover, in each instance where Respondents' were challenged on their classifications and a settlement or payment of backwages ensued, Respondents' entered into an agreement of future compliance. Yet, the pattern of similar violations continued. Clearly, Respondents' had no intention of honoring such an agreement. At least not until they were faced with potential debarment.

Because Respondents' have been found to have intentionally misclassified and underpaid workers in violation of their obligations to their employees, I must recommend that they be debarred pursuant to Section 3(a) of the DBA and the regulations at 29 C.F.R. § 5.12(a) and (b).[18]

ORDER

It is recommended that Berbice Corporation be placed on the ineligible list under Section 3(a) of the Davis-Bacon Act and 29 C.F.R.§ 5.12(b) for a period not to exceed three (3) years. It is further recommended that Mohamed Khaleel and Nancy Jean Khaleel, as officers exercising control, supervision or management over the performance of contracts, labor policies, and employment conditions at Berbice Corporation be placed on the ineligible list under Section 3(a) of the Davis-Bacon Act and 29 C.F.R.§ 5.12(b) for a period not to exceed three (3) years.

ORDERED this 16th day of April, 1999, at Metairie, Louisiana.

CLEMENT J. KENNINGTON
Administrative Law Judge

[18] While it appears from the testimony that Respondents' consistently violated their record keeping responsibilities under the DBA as well, I rely on this information only as support for my determination that debarment is proper as a result of their misclassification and underpayment violations. I make no finding as to whether the record keeping violations alone are sufficient to support a recommendation for debarment.

NOTICE OF REVIEW. Within 40 days after the date of this decision, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210, and comply with the requirements of 29 C.F.R. Part 7. A copy of the petition must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW, Suite 400, Washington, DC 20001-8002. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate. *See* 29 C.F.R. § 6.34.